



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 21, 2004

Terry Monson
3629 West 4050 North
Moore, ID 83255

Richard Cole
Rt 1
Darlington, ID 83255

RECEIVED

JUN 28 2004

Department of Water Resources
Eastern Region

Re: Correspondence dated June 4, 2004

Dear Mr. Monson and Mr. Cole:

The Idaho Department of Water Resources (IDWR) has received your letter dated June 4, 2004 regarding mitigation for ground water use in Water District 34. In your letter you state that the Upper Valley Water Pumpers have submitted a mitigation plan, that you agreed with and signed. IDWR did receive a letter regarding mitigation dated June 4, 2004, which was signed by yourselves and a number of other water users, however, the letter did not propose a mitigation plan. A copy of our response to that letter is attached for your reference.

Because IDWR has determined that the above-referenced letter does not constitute an acceptable mitigation plan, you will be subject to any assessments made by Water District 34 to cover the costs of mitigation, assuming that Water District 34 submits an acceptable plan to IDWR. You will only be subject to assessment if you are using ground water during the 2004 irrigation season. You have the option of reducing your assessment by reducing or ceasing your diversion of ground water during the remainder of the 2004 irrigation season.

Respectfully,

Tim Luke
Water Distribution Section

Enclosure

cc: Robert Duke, Watermaster, Water District 34
Seth Beal, Advisory Board Chairman, Water District 34
Karl Dreher, Director, IDWR
IDWR Eastern Region



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Department of Water Resources
Eastern Region

Loy Pehrson
Rt 1, Box 48
Darlington, ID 83255

Re: Correspondence dated June 4, 2004

Dear Mr. Pehrson:

The Idaho Department of Water Resources (IDWR) has received your letter dated June 4, 2004 regarding mitigation for ground water use in Water District 34. Your letter does not propose an alternative mitigation plan. The signatories of the letter will not be exempted from assessments that Water District 34 is authorized to assess for acquiring mitigation water.

Conjunctive administration of ground water and surface water in Water District 34 has been established by rule. Pursuant to IDAPA 37.03.12.050.01,

All ground water rights shall be administered conjunctively as part of the Big Lost River and tributaries **unless the ground water user can show to the satisfaction of the director**, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River

While additional studies would result in a better understanding of ground water/surface water interactions in the Big Lost River basin, prior studies were determined to be adequate to establish the conjunctive administration requirements outlined in IDAPA 37.03.12.050.

As you stated, Idaho water law is based on prior appropriation doctrine, "first in time, first in right." Conjunctive management of ground water and surface water requires that junior ground water users either be curtailed, or provide mitigation to senior surface water users in order to be allowed to continue out-of-priority diversion of junior ground water rights.

Regarding the conveyance of commingled natural flow and storage water in the Big Lost River channel, IDAPA 37.040.03.b states that conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. In other words, because the natural channel is used to deliver storage water, the commingled storage water will share in conveyance losses and may decrease the losses to the natural flow. In addition to being confirmed by the Water District 34 water distribution rules, this is also common practice in other Idaho basins.

IDAPA 37.03.12.050.04.d authorizes Water District 34 to acquire mitigation water through the watermaster and assess the costs to ground water users. After the watermaster received a request for mitigation, IDWR required that acceptable mitigation plans be submitted on or before June 4, 2004. The advisory committee of Water District 34 decided to acquire the mitigation water during the 2004 irrigation season for its ground water right members. Ground water users could submit their own mitigation plan to IDWR, and if approved, could avoid the assessments for mitigation from Water District No. 34. As of the date of this letter, IDWR has not received an acceptable individual plan of mitigation.

You questioned the authority of the advisory committee to acquire mitigation water. Idaho Code § 42-602 states that the Director of IDWR "shall have direction and control of the distribution of water from all natural water sources with a water district" Idaho Code § 42-603 states that IDWR "is authorized to adopt rules and regulation for the distribution of water . . . as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users" Idaho Code § 42-605(6) states that the advisory "committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district" Rules were promulgated by IDWR that authorized action by the water district to mitigate when the request is made. Under the rules, mitigation would always be requested of the watermaster after the annual water district meeting. Because the ground water users must respond expeditiously to avoid curtailment, the advisory committee acted to propose mitigation for the ground water users' diversions. IDWR finds that the action of the advisory committee was appropriate in proposing and implementing a mitigation plan that will facilitate the authority of IDWR to direct and "control the distribution of water from all natural water sources within a water district"

You stated in your letter that, "There should be no additional mitigation, as both IDWR and the patrons of this basin have an agreed upon mitigation plan in place...."

IDWR is not aware of any such mitigation plan submitted by ground water users in the Big Lost River basin. If the ground water users have a long-term mitigation plan, you should submit this plan to IDWR for consideration with respect to calls for mitigation in future years.

subject to assessment if you are using ground water during the 2004 irrigation season. You have the option of reducing your assessment by reducing or ceasing your diversion of ground water during the remainder of the 2004 irrigation season.

Respectfully,



Tim Luke
Water Distribution Section

cc: Robert Duke, Watermaster, Water District 34
Seth Beal, Advisory Board Chairman, Water District 34
Karl Dreher, Director, IDWR
IDWR Eastern Region



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June 21, 2004

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JUN 28 2004

Department of Water Resources
Eastern Region

Melvin Marx Hintze
4372 W. Houston Road
Mackay, ID 83251

Re: Correspondence dated May 26, 2004

Dear Mr. Pehrson:

The Idaho Department of Water Resources (IDWR) received your letter on June 4, 2004 regarding mitigation for ground water use in Water District 34. Your letter does not propose an alternative mitigation plan.

As you stated, reduced aquifer recharge and low precipitation in recent years are the main contributors to the shortage of water in the Big Lost River basin. However, prior studies of the basin have concluded that diversion of ground water has also contributed to the shortage of water for senior surface water rights on the Big Lost River. While additional studies would result in a better understanding of ground water/surface water interactions in the Big Lost River basin, prior studies were determined to be adequate to establish the conjunctive administration requirements outlined in IDAPA 37.03.12.050, which states,

“All ground water rights shall be administered conjunctively as part of the Big Lost River and tributaries unless the ground water user can show to the satisfaction of the director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River”

Idaho water law is based on prior appropriation doctrine, “first in time, first in right.” Conjunctive management of ground water and surface water requires that junior ground water users either be curtailed, or provide mitigation to senior surface water users in order to be allowed to continue out-of-priority diversion of junior ground water rights.

Because IDWR has determined that the above-referenced letter does not constitute an acceptable mitigation plan, you will be subject to any assessments made by Water District 34 to cover the costs of mitigation, assuming that Water District 34 submits an acceptable plan to IDWR. You will only be

Loy Pehrson
June 14, 2004
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In the future, IDWR would like to work with the water district and water users to improve conjunctive management procedures. Development of a long-term mitigation plan that is acceptable to the water users and IDWR is encouraged. Additional scientific studies leading to revision of the conjunctive management rules may also provide improvements if funding can be obtained for such projects.

Respectfully,

A handwritten signature in cursive script, reading "Gary Spackman".

Gary Spackman
Water Allocation Bureau Chief

cc: Dave Nelson
Robert Duke, Watermaster, Water District 34
Seth Beal, Advisory Board Chairman, Water District 34
Karl Dreher, Director, IDWR
IDWR Eastern Region



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DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 21, 2004

Tyler T. Felton
Mary Lou Felton
P.O. Box 779
Ketchum, ID 83340

RECEIVED

JUN 28 2004

Department of Water Resources
Eastern Region

Re: Correspondence dated June 10, 2004

Dear Mr. and Ms. Felton:

The Idaho Department of Water Resources (IDWR) has received your letter dated June 10, 2004 regarding mitigation for ground water use in Water District 34. In your letter, you stated that you "...have no interest in further subsidizing any Junior water rights... I should be a beneficiary of any mitigation and not a payer..."


You are not being required to provide mitigation to junior water rights. You are required to provide mitigation to senior surface water rights in order to be allowed to continue to divert your junior ground water rights out-of-priority. The amount of mitigation that you are required to provide is based on the amount of ground water that you divert. Your share of the mitigation burden will be proportionately smaller than another user who diverts more ground water than you do.

Conjunctive administration of ground water and surface water in Water District 34 was established by rule IDAPA 37.03.12.050.01 in 1994. A copy of this rule was sent to you along with the mitigation notice dated May 13, 2004. The rule provides that water users with water rights whose source is the Big Lost River with their point of diversion downstream from Mackay Dam may request mitigation for water rights with 1905 and earlier priority dates. Because some of your surface water rights meet these criteria, you have had the opportunity to request mitigation from junior ground water users for the past ten years. Requests for mitigation must be made to the watermaster at the beginning of the season, when you make your initial request for delivery of your water right. If you would like junior ground water users to provide mitigation for your senior surface water rights in future years, you should make a request to the watermaster as described by the rule. Because you use both surface water and ground water, you may be both a beneficiary and a provider of mitigation, if you request mitigation in future years.

Because you do not have an acceptable alternative mitigation plan, you will be subject to any assessments made by Water District 34 to cover the costs of mitigation, assuming that Water District 34

submits an acceptable plan to IDWR. You will only be subject to assessment if you are using ground water during the 2004 irrigation season. You have the option of reducing your assessment by reducing or ceasing your diversion of ground water during the remainder of the 2004 irrigation season.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke". The signature is fluid and cursive, with the first name "Tim" and last name "Luke" clearly distinguishable.

Tim Luke

Water Distribution Section

cc: Robert Duke, Watermaster, Water District 34
Seth Beal, Advisory Board Chairman, Water District 34
Karl Dreher, Director, IDWR
IDWR Eastern Region

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